

1948.

File No.

O.C. of Wards
/48

Legal Dept.

A BRANCH



Subject:— Opinions under the
Bombay Court of
Wards Act 1955-

P-51
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File No.

O.C. of Wards /48

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BKS. 9/6/ 50.

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13/6
K.S.R.
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Office of the R.L.A.

The attention of the Revenue Department is invited to R.L.A's Opinions Nos: 7186, dated the 26th September 1931 and 1319, dated the 16th February 1946. The Legal position stated therein remains the same inspite of the accession of the states to the Dominion of India. It may change if the states in question ultimately merge; that would depend upon the terms of the merger.

Id/-P.M.L. 9/2
Remembrancer of Legal Affairs,

U.R. to R.D.No. 1392

dated the 9th February 1948.

BKS. 11/6/ 4c.

It appears that the Court of Wards assumed management of the Purandare Estate under section 4 (1) read with section 5 (1) (c) of the Bombay Court of Wards Act, 1905 when the Sardar Shrinivasrao Purandare was declared by the District Court to be incapable of managing his property. Thereafter it transpired that the joint family consisting of the Sardar and his son R.S.Purandare was dissolved and the Sardar had obtained a decree for his half share in the joint family property after partition. Since the Court of Wards had assumed management of the whole of the estate including the half share of R.S.Purandare, it was considered that the management by the Court of Wards in respect of the share of R.S.Purandare could not be lawful unless he also applied to the Court of Wards for taking over the management of his share. Consequently, on being requested by Government, R.S.Purandare applied on behalf of himself and his sons for taking over his half share also for management by the Court of Wards. Since then the whole estate consisting of the private property and the Saranjam estate has been under the management of the Court of Wards. Meanwhile, it appears that the Sardar applied to the Court for the execution of the partition decree. R.S.Purandare also applied to the Court so that the Court of Wards should be joined as a party in execution proceedings. The lower Court rejected his application but in revision the High Court has directed that the Court of Wards should be joined as a party to the execution proceedings. The joint family property has not so far been partitioned between the Sardar and R.S.Purandare. Since R.S.Purandare did not provide proper maintenance for his sons by his

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first wife, the relations between them became very strained and the sons applied to Government for partitioning the share of R.S.Purandare in the estate between them. In his opinion No.4081 dated 22nd April

1947, the R.L.A. advised that the sons of Mr.R.S.Purandare by his first wife would be entitled to their share and the Court of Wards may either work out the partition between R.S.Purandare and his sons if it finds practicable and convenient to do so unaided or it may seek the help of the Civil Court under the provisions of section 36 of the Bombay Court of Wards Act. The District Government Pleader, Poona has been directed by the Collector of Poona to prepare the necessary application for the purpose, but no such application has yet been filed. Meanwhile the Sardar died in November 1947. It appears that he made a will before the management of the estate was assumed by the Court of Wards under section 4(1) of the Bombay Court of Wards Act, and under that will, executors have been appointed but no probate or Letters of Administration have been taken. The Collector of Poona reports that the estate is now free from debts and desires to know whether the property should be retained under the superintendence of the Court of Wards until it is partitioned between Mr.R.S.Purandare and his sons or whether the superintendence of the property by the Court of Wards should be withdrawn under section 40(2) of the Court of Wards Act. The Commissioner, C.D., however, is of the opinion that in view of the several complications involved in the partition of the estate between R.S.Purandare and the other members of the family, and in view of the fact that the three sons of Mr.R.S.Purandare by his first wife are now major, and that the estate is now free from debts, there is no justification for keeping the estate under the management of the Court of Wards any longer and hence the superintendence of the estate should be withdrawn and the estate restored under section 40(2) of the Court of Wards Act. to R.S.

Purandare who is the legal heir of the late Sardar. The question raised for the consideration of the R.L.A. is whether the proposal of the Commissioner should be accepted.

2. It is apparent from the facts stated above that the half share of the late Sardar in the estate is under the management of the Court of Wards under section 4(1) read with section 5(1)(c) of the Bombay Court of Wards Act, and the other half share in the estate which belongs to R.S. Purandare and his sons is under the management of the Court of Wards under section 9(1). Sub-section (1) of section 40 provides that where superintendence has been assumed in pursuance of an order under section 9(1), the Court of Wards shall withdraw such superintendence as soon as, in the opinion of the Provincial Government, the property is free from embarrassment. It is true that the property is free from embarrassment but the estate has not yet been partitioned by metes and bounds and consequently it is not possible to say which property should be handed over to R.S. Purandare. There is also a further difficulty in this connection. As stated above the relations between R.S. Purandare and his sons are strained; and the sons too are co-sharers in the estate. The R.L.A. has already advised that the Court of Wards may either work out the partition between R.S. Purandare and his sons, if it finds it practicable and convenient to do so unaided or it may seek the help of Civil Court under the provisions of section 36 of the Court of Wards Act. If the half share in the property - itself now undivided is handed over to R.S. Purandare without partitioning it between him and his sons, there is bound to be litigation between them with the consequence that the property for the preservation of which Government has taken so much trouble would be in danger of being frittered away in unnecessary

EXS. 11/6/40.

and wasteful litigation. Consequently, even though the property is now free from embarrassment, the Court of Wards should be asked to continue the management until the partition of the property between H.S.Purandare and his sons is worked out, and their shares are definitely ascertained.

3. With regard to the other half share which was the property of the late Sardar it was taken under the management by the Court of Wards under section 4(1) read with section 5(1)(c). It appears that the withdrawal of the superintendence over that property by the Court of Wards is impracticable at this stage. Sub-section (2) of section 40 provides that the Court of Wards may with the sanction of the Provincial Government at any time, withdraw its superintendence from the person or property or both of a Government ward and shall withdraw its superintendence, as soon as in the opinion of the District Court certified to the Court of Wards in all cases mentioned in clauses (a) to (e). Clause (c) relates to the case of a disqualified person when he is fit to manage his own property. The proviso (i) to sub-section (2) provides that where a Government ward dies or ceases to be disqualified and his property is still encumbered with debts and liabilities, the Court of Wards may, with the sanction of the Provincial Government, retain the said property under its superintendence until such debts and liabilities have been discharged. It is apparent that section 40(2) does not provide for a case where a Government ward dies and his property is free from debts and liabilities. Apparently in a case of this kind, the property will have to be restored to the deceased ward's heirs. Section 39 provides that where on the death of any Government ward, the succession of his property or any part thereof is disputed, the Court of Wards may, with the sanction of the Provincial Government, either retain the superintendence of the property until one of the claimants has established

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his claim to the same in a competent civil court or institute a suit of inter-pleader against all the claimants. The Sardar has left a will and if that will is held proved, the Sardar's widow would be entitled to a life estate in the property and after her death, the three sons of R.S. Purandare by his first wife would be entitled to an absolute estate. If, however, the will is not proved, the half share of the Sardar in the estate would be liable to be partitioned between his widow and R.S. Purandare (see section 3(1) of the Hindu Women's Right of Property Act, 1937 as amended by Bombay Act XIX of 1947). It is, therefore, clear that the succession to the half share of the Sardar in the estate is yet to be settled, and it is for the parties to get their respective rights to the property determined by a competent civil court. Consequently, section 39 of the Court of Wards Act will apply and the Court of Wards should continue to manage the half share of the Sardar with the sanction of Government until the question of succession to the Sardar's half share in the property is properly decided by a competent civil court.

4. With regard to the Saranjam estate which forms part of the estate under the management of the Court of Wards, it appears that different considerations will apply. The Sardar had only a life estate in the Saranjam and after his death, it has become resumable by Government. Consequently, the Saranjam estate may be considered as no longer under the management of the Court of Wards and it would be open to Government to resume and regrant it to R.S. Purandare. Whether it should be ^{so} re-granted is a question which has to be decided on its own merits. But so far as the private property of the Purandare family is concerned, it is not possible at this stage to
BKS. 11/6/43.

ask the Court of Wards to withdraw its superintendence until the complications mentioned above have been properly solved. Otherwise the complications which already exist are likely to be worse.

5. The question raised in the linked R.D.File No.2346-45-II-5864 is whether Government's consent would be necessary under section 38 of the Court of Wards Act to the will made by the Sardar. Section 38 of the Bombay Court of Wards Act provides that no will made by a Government ward shall be valid without the consent of the Provincial Government obtained either previously or subsequently to the making of a will, on an application being made to it through the Court of Wards. 'Government ward' is defined in section 2, clause (a), as meaning any person of whose property or whose person and property the Court of Wards may for the time being have the superintendence under this Act. It is, therefore, clear that section 38 contemplates a will made by a person while he is a Government Ward. In the present case, the Sardar made the will long before the Court of Wards assumed management of his estate. Consequently, section 38 will have no application and Government's consent would not be necessary. The executors under the will will have to apply for a Probate and there will be an opportunity for those who desire to dispute the will to oppose the grant of Probate.

6. In the third linked R.D.File No.2346-45-1361 the question raised for the consideration of the R.L.A. is whether the Court of Wards should pay the costs to Mrs.Radhabai widow of the Sardar to enable her to apply for Probate of the will made by the Sardar.

Section 33 of the Bombay Court of Wards Act which provides for payment of costs by a Civil Court in any suit brought by or against a Government Ward has no application. Under section 23 of the Court of Wards

has powers to do all such things requisite for the proper care and management of any property which it assumes under this Act, as owner of the property and to do all such things as may lawfully be done by a guardian. Mrs. Radhabai claims the property under the will made by the Sardar. The Court of Wards is not in the least interested in the ~~summarized~~ will if being proved or the probate thereof obtained by Mrs. Radhabai. It would not, therefore, be legal for the Court of Wards to pay Mrs. Radhabai the necessary costs for taking out a probate of the will of the late Sardar.

Id/-P.N.L.

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Remembrancer of Legal Affairs.

U.R. to R.D. No. 1317 , dated the 6th February 1948.

BKS. 11/6/ 4c.

Retention of superintendence of estate pending decision of the Court on rights of claimants.

Bombay Court of Wards Act, 1905 - section 39.

The superintendence over the property of the minor Prahaladsinhji, son of the late Arjunsinhji Madhavsinhji of Kherdu, taluka Anand, Kaira District, was sanctioned under section 4(1) of the Bombay Court of Wards Act, 1905, by G.R., R.D. No. 363/33, dated the 25th March 1933, and the estate is since then under the management of Government. The Government ward ~~Kankh~~ Prahaladsinhji who was unmarried died on 2-5-47 and has left behind him his natural mother, a step mother and an unmarried sister. On his death (1) his natural mother, (2) his unmarried sister, (3) Khumansinhji Jalamsinhji, (4) Khumansinhji Himatsinhji, (5) Shiveang Raisang, (6) Sahebsang Jaswantsinhji and (7) Chhatrasinhji Gumansinhji have claimed to be the heirs of the estate. The claims and arguments advanced by each of the claimants are discussed by the Collector of Kaira in his letter at pp.13-20 ante. The Collector finally states as follows :-

"As already stated above, this is not an ordinary case of heirship but it is a case wherein the legal position of the mother of the deceased ward as to her right of adoption is to be decided. If this right of adoption is accepted in view of the previous judgments quoted above, the question of the remaining claimants does not arise; but if this right of adoption is decided otherwise, it is a question as to who should be the legal heir or the deceased ward. The point is not free from doubt as to whether the right of the mother should be accepted or that the parties should be referred to the Civil Court as contemplated in the section referred to above. Orders as best deemed fit may therefore please be passed - consulting even the Remembrancer of Legal Affairs if used be."

The Commissioner, N.D., states that sanction may be accorded under section 39 to the ~~that~~ retention of the superintendence of the property until one of the claimants has established his claim to the same in a competent civil court. R.D. has requested the R.L.A. to advise as regards 'A' of the Collector's letter quoted above, namely, whether the right of the mother should be accepted or the

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parties should be referred to the court.

2. Section 39 of the Bombay Court of Wards Act, 1905, provides that where, on the death of any Government ward, the succession to his property or any part thereof is disputed, the Court of Wards may, with the sanction of the Provincial Government, either retain the superintendence of the property until one of the claimants has established his claim to the same in a competent civil court, or institute a suit of interpleader against all the claimants. In the present case, on the death of the minor Thakor Saheb Prahaladsinhji, his mother and unmarried sister as well as four of his co-parceners have claimed to be his heirs and it is not possible either for the Collector or the Government to decide who is the legal heir. In the circumstances the best course is to continue the management of the estate under section 39 until the question of succession to the deceased ward is decided by a competent Civil Court (cf. H.L.A.'s opinion No.1317, dated 6-2-48). The view taken by the Commissioner, H.D., in his endorsement at p.19 ante is correct.

Id/-P.M.L.

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Remembrancer of Legal Affairs.

U.R. to R. D. No. 2354 dated the 10th March 1948.

BKS. 11/6/ 48.

Office of the R.L.A.

Liability of the estate for breach of contract of marriage by ward's dependent-
Bombay Court of Wards Act, 1905-
 Sections 25, 26, 37

It appears that the Mehlool Estate was first taken under the management of the Collector of Panch Mahals under section 26 of the Gujarat Talukdars Act on 2nd February 1905. In 1913 as Thakore Raisingji Narharsinghji was found unfit the management of the estate was taken as per G.R., R.D. No. 7914/198-Confl, dated 26-6-1913, transferred to the Court of Wards and a certificate of the District Court declaring Thakore Raisingji unfit was obtained under section 5(1)(c) of the Bombay Court of Wards Act, 1905, and the superintendence was assumed under section 4 of the Act. In 1937 his son Prithwirajaisingji applied to Government for restoration of management to him but his request was rejected. Now one Sardar Bhardulsinghji of Baneda State has made certain claims state in R.D. note at p. 317 ante from the funds of the Mehlool estate on account of breach of promise of marriage by Kumar Kirtisinhji (son of Prithwirajaisingji) with the Sardar's daughter. The Commissioner, N. D. has decided the claims as under:

(i) as regards amount of Rs. 10,000 paid to Kumar's mother, the mother Hirabai should be asked to repay the amount immediately failing which the Sardar should seek his remedy in a court of law;

(ii) as regards the amounts of Rs. 2336/- Rs. 2368/- and Rs. 378/- received by the Kumar his father should be asked to repay the sums to the Sardar failing which recovery should be effected from the

Kumar's monthly allowance by instalments; and

(iii) as regards incidental expenses of Rs. 8281/- the Sardar should be informed that it is not feasible to reimburse such expenses from the estate.

The Collector of Panch Mahals accordingly, informed the Sardar. The latter has now approached Government requesting that (i) the sum of Rs. 10000 should be paid to him even by attaching the monthly allowance drawn by the mother of the Kumar, (ii) the sums of Rs. 2336/-, Rs. 2368/- and Rs. 378/- should be paid to him in lump sum and by instalments. He has not pressed his claim for incidental expenses. R.D. called for a report from the Commissioner, M.D. who is of the view that the betrothal of the Kumar with the knowledge of the Collector can hardly be interpreted to mean that the Kumar or his relatives were free to incur any pecuniary liabilities without the specific permission of the Collector in writing as required by section 37(2) of the Act and that the Estate is not liable to fulfil the contracts entered into by the Kumar with the Sardar without consent in writing of the Court of Wards. The Commissioner is supported by the D.G.P., Godhra whose opinion is at x p. 271 ante. The R.L.A. is requested to advise in the matter.

3. Section 25 of the Bombay Court of Wards Act, 1905 provides that the Court of Wards may, from time to time, determine what sums shall be allowed in respect of the expenses of any Government Ward and of his family and dependents. Section 26 provides that the Court of Wards, or the manager (if any) appointed by it under this Act, shall manage the property of every Government ward under its superintendence or under his management diligently and faithfully for the benefit of the Government Ward, and shall in every respect act to the best of its or his

judgment for the Government Ward's interest as if the property were its or his own. Sub-section (1) of section 37 provides that except with the approval of the Court of Wards a Government ward shall be incompetent to transfer or create any charge on or interest in, his property or any part thereof or to enter into any contract which may involve him in pecuniary liability etc. Sub-section (2) provides that nothing in this section shall be deemed to affect the capacity of a Government Ward to enter into a contract of marriage. Provided that a Government Ward shall not incur in connection with such contract, any pecuniary liability, except such as, having regard to the personal law to which he is subject and to his rank and circumstances, the Court of Wards may, in writing declare to be reasonable. It is clear from section 37 that a Government Ward cannot create any charge or interest in the estate or to enter into a contract involving liability unless with the approval of the Court of Wards. It is true that a Government Ward is free to enter into a contract of marriage under sub-section (2) but any pecuniary liability that he incurs must be subject to a declaration in writing by a Court of Wards. Even upon the assumption that Kumar Kirtisinhji is held to be a Government Ward there being no written declaration by the Court of Wards regarding the liability, the estate cannot be said to be liable for the monies spent by the Bardar. The best course therefore for the Bardar would be to seek redress in a court of law at the parties concerned.

Id/-P.H.L.

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Remembrancer of Legal Affairs.

No. 4041 ,dated the 26th April 1948.

Court of Wards
Act, 1905.

Raising of Loan
by Chafal Estate.

R.L.A.'s Opinion
No.11813, dated
9-12-1947.

In his last opinion No.11813 dated the 9th December 1947, the R.L.A. opined that condition No.1 requiring the Chafal Estate to remain in charge of the Court of Wards during the pendency of the loan was difficult to be implemented in view of the fact that the property was to remain under the management of the Court of Wards only until the suit proposed to be filled under section 92 of the Civil Procedure Code was finally decided. The Collector and Court of Wards, West Khandesh considers that this condition is essential in the interest of the estate and realization of the loan advanced to the Chafal ~~managers~~ there would be no difficulty in implementing this condition since the final disposal of the suit under section 92 of the Civil Procedure Code would take a long time. The Commissioner, C.D. agrees with the view of the Collector. The R.L.A. is requested to advise whether in view of the Commissioner's recommendation agreeing with the view of the Collector, there would be any legal objection to retaining the 1st condition.

2. It is very difficult to see the propriety of this condition when it is so very uncertain whether suit proceedings would not be terminated before the loan could be liquidated. The Collector himself admits in his letter at p. 69 ante that the persons ultimately entitled to the estate would be liable to pay the balance of the loan and such liability is borne out by the provisions of sections 23, 27 and the 2nd proviso to section 40(2) of the Bombay Court of Wards Act, 1905. In any case if the property is ultimately held by the Court to be charitable property, Government will have to release the property from the management in which case it would not be possible to continue the management merely by virtue of this condition. It appears, therefore, that it would be safer to omit condition No.1 altogether and such omission would not prejudicially affect the creditor estate nor does it impair the liability of the Chafal estate for the loan.

Id/-P.M.L. 27/4
Remembrancer of Legal Affairs.

Office of the R.L.A.

Seen and returned.

The view taken by the Revenue Department at p. 157 ante is correct. The empowerment under section 10(1) (a) of the Bombay Court of Wards Act, 1905, will not extend to settlement of claims of creditors.

Id/-P.M.L.

26/6

Remembrancer of Legal Affairs.

U.R. to R.D., No. 6016 ,dated the 28th June 1948.

BKS. 11/6/ 40.

By G.R., R.D., No. 5042/33, dated 16.5.1938, Government has directed :

"Divergent practices are followed in different districts in the investment of surplus funds from one estate in another estate under management of Court of Wards. In future loans should not be granted from the funds of one estate to another estate under management without the permission of Government. Such loans should as far as possible be secured by a mortgage of immoveable property which satisfies the requirements of section 20(e) of the Indian Trusts Act, 1882. A mortgage of such property will require the sanction of Government under section 27(a) of the Bombay Court of Wards Act, 1905."

In pursuance of this G.R., the Collector of Satara proposes to raise a loan of Rs. 15,000 from the funds of Kathi Estate on the security of the annual dumala revenue of the village of Darvan in Patan Taluka, amounting to Rs. 1,7776. The Commissioner, C.D., considers that the dumala revenue falls (4) of section 3 of the Land Revenue Code and can, therefore, be regarded as immoveable property. The R.L.A. is requested to advise whether the view taken by the Commissioner, C.D., is correct.

2. Section 20(e) of the Indian Trusts Act, 1882, provides for investment of trust money on the first mortgage of immoveable property situate in a Province of India. "Immoveable Property" has not been defined in that Act. However, that term is defined in section 3(25) of the General Clauses Act, 1897, as including land, benefits to arise out of lands and things attached to the earth or permanently fastened to anything attached to the earth. But the term "land" is not defined in that Act. Dumala revenue of a village means a share of the revenue of the village which has been alienated to the grantee. A village for these purposes is made up of the lands comprised therein. Future rents and profits arising out of the land have been held to be benefits arising out of the land. See 6 I.C. p. 504; and I.L.R. 36 Cal. 665 at pp. 667-8. In 1 Indian Appeals p. 34 it was held that a hereditary right to toda giras payable by an

Inamdar out of the rents of a village is an interest in immoveable property. Compare also the definitions of land as contained in the Bombay Land Revenue Code, the Bombay Revenue Jurisdiction Act, the Land Acquisition Act and Bombay Acts II and VII of 1863. From these definitions it appears that the expression "land" as used in this country has got at least two meanings : (1) the soil itself and (2) the public revenue on land (see Gupte's Land Revenue Code, p.13). Although the definition of the term "land" contained in the aforesaid Acts is meant for the purposes of those Acts, still that definition appears to have acquired that meaning by usage. On the whole there would be no legal objection to treating ~~land~~ ^{land} ~~dumala~~ revenue of the village as land and therefore immoveable property within the meaning of ~~section 30(a)~~ of the Indian Trusts Act.

Id/-P.M.L.
23/9

Remembrancer of Legal Affairs.

U.R. to R.D., No. 9092, dated the 24th September

1948

BKS. 11/6/ 4c.

Office of the R.L.A.

Since there was a permanent transfer of X lands in the present case without the previous sanction of Government under the proviso to section 27(a) of the Bombay Court of Wards Act, 1905, there would be no legal objection to Government cancelling the transfer.

Id/-P.M.L.

23/11

Remembrancer of Legal Affairs.

U.R. to R.D., No. 11011 ,dated the 24th November
1948.

BKS. 11/6/ 4c.

The Collector of Poona made two applications in the present case - (1) under section 5(1)(b) and (2) under section 19(1) of the Bombay Court of Wards Act, 1905, the former being for declaring the two widows of the deceased Shrinivasrao Purandare of Poona to be unfitted to manage their property and the latter for temporary custody and protection of their property. It appears that the District Court passed an order under section 10(1) - (a) authorising the Collector and Court of Wards to take over the temporary management of the estate. This order was passed with the consent of the widows and the trustees and the Government Pleader, but the Collector considered that the terms of the order of the District Court were different from those which the Government Pleader was authorised to consent to on his behalf. A revision application was made to the High Court under Civil section 115 of the ~~1908~~ Procedure Code for setting aside the order of the District Court but that application was rejected by the High Court. The result is that the order of the District Court for temporary custody of the property stands confirmed. In view of these facts the Collector and the Court of Wards, Poona, suggests that Government may pass orders prohibiting him from assuming the temporary management of the estate and that he may be empowered to withdraw his application filed under section 5(1)(b). The Commissioner, C.D., agrees to the proposal of the Collector to withdraw the application filed under section 5(1)(b). The R-L.A. is requested to advise in the matter.

2. Since the order of the District Court authorising the Collector and the Court of Wards to assume temporary management stands, it would not be competent for Government to pass any order prohibiting the assumption of such temporary management. There is no provision in the Bombay Court of Wards Act, 1905, authorising the Collector to withdraw the application once it is made under sec. 5(1)(b).
BKS. 11/6/40.

The proposal made by the Collector to withdraw the application would not, therefore, be legally feasible. However, what the Collector has in view can be achieved by another way. There is nothing in the Bombay Court of Wards Act, 1905, which requires the Collector to prosecute his application made for disqualifying a landholder or pension-holder under section 5(1). Consequently, it would be open to the Collector of Poona to intimate to the Court that he does not wish to prosecute his application whereupon the Court will have to dismiss the application for default; and on such dismissal the order made by the District Court under section 10(1)(a) will lapse, with the result that it would not be incumbent on the Collector to assume the temporary management of the property. It may also be noted that the order of the District Court requiring the Collector to assume the temporary management under section 10(1)(a) was intended to save the property from being frittered away in litigation; and the enquiry made with the Government Pleader, Poona, discloses that the dispute between the two widows of Shrinivasrao Purandare has now been settled and consequently the need of taking over the temporary management of the property no longer survives. In these circumstances there would be no legal objection to the Collector of Poona intimating the District Court, Poona that he does not wish to prosecute his application made for disqualifying the two widows under section 5(1)(b) of the Court of Wards Act.

Id/-P.M.L.

2/10

Remembrancer of Legal Affairs.

U.R. to R.D., No. 9920, dated the 23rd October 1948.

BKS. 11/6/ 48

Office of the R.L.A.

Continuance of
superintendence.

Bombay Court of
Wards Act, 1904.
- section 40(2)
first proviso (iv)

Seen and returned.

There would be no legal objection to
continuing the superintendence for a further
period of two years under clause (ii) of the
first proviso to section 40(2) of the Bombay
Court of Wards Act, 1904.

Id/-P.H.L.

8/12

Remembrancer of Legal Affairs.

U.R. to R.D., No. 11654 ,

dated, the 8th December 1948

BKS. 11/6/ 4a.

Office of the R.L.A.

Court of Wards
Act, 1905

Claim by
Mrs. Oze.

The view taken by the Commissioner, Southern Division appears to be correct. The amount of Rs. 18,000 was produced before the Court of Wards by Mrs. Bharadabai as part of the estate of the deceased (see her application at p. 67 of the File I) and was so treated by the Court of Wards also. At no stage did she claim this amount as her own stridhan until recently when the feelings between her and her adopted son have not been good. In the circumstance the proper course for the Court of Wards would be not to admit her claim until she has proved it in a Court of law.

Id/-P.M.L.
22/12

Remembrancer of Legal Affairs.

U. R. to R. D., No. 12215 dated the 23rd December

1948

BKS. 11/6/ 40.

Release of property
by the Court of
Wards.

Court of Wards Act,
1905.
sections 4(1), 27 and
40(2)

It appears that by G.R.No.3865/33 dated 27th May 1935, Government in exercise of powers under section 4(1) of the Bombay Court of Wards Act, 1905, accorded sanction to the assumption by the Court of Wards of superintendence of the property of the late Sardar S.V.Natu, who dies leaving behind him his widow, three sons of whom one was major and the others minors. By private arbitration it appears that the property was later on partitioned between the three sons and widow and the award was filed in the Court of the Civil Judge, Senior Division, Poona, and a final decree has accordingly been passed. The ornaments, silverpots and other moveable property have been allotted to the respective shares amicably. As regards the other moveable property viz. shares of companies, Government Securities and National Savings Certificates etc. it is in possession of the Court of Wards. The immoveable property has been also divided between the four sharers as well as the moveable property. The Inam village Peth, Taluka Ambegaon has gone to the share of the widow who will have a life interest in this property and it is divisible among the three sons of the late Sardar after her death. The arbitrators have kept some immoveable property common among all the sharers as they were of opinion that it was not in the interest of the sharers to divide the same. This partition of the property has been sanctioned by Government under section 27 of the Court of Wards Act as it was considered to be in the interest of wards. Mr.N.S.Natu, the eldest ward, wants that his share should be released by the Court of Wards. As regards the property that has been allotted to the shares of the ~~Sardar S.V.Natu~~ other two sons and the widow, they desire that the Court of Wards should retain management for one

year more. One of these sons has also become major now and will be completing his education by the end of April 1949. In these circumstances the Collector and the Court of Wards has recommended that Government may accord their sanction to the withdrawal of the superintendence by the Court of Wards over the property allotted to the share of Mr.N.S.Natu under section 40(2) of the Court of Wards Act immediately and to give it in his possession; and as regards the other property excluding the share of Mr.N.S.Natu, the superintendence over the same may be withdrawn after the end of April 1949. The Commissioner, C.D., agrees with the Collector. R.D. considers that the case falls under the first proviso cl.(ii) to section 40(2) and the whole property will have to be kept under the management giving Mr.N.S.Natu his share of the estate. The R.L.A. is requested to advise whether this course of action suggested is legally correct.

Clause (e) of section 40(2) provides that the Court of Wards may, with the sanction of the Provincial Government, at any time withdraw its superintendence where it was assumed under section 4(1) in the case of a family which was undivided according to Hindu law, any co-sharer ceases to be disqualified under sub-section (1) of section 5. Clause (ii) of the first proviso to that sub-section states that in the case of land-holders or pension-holders, who are co-sharers in a family which is undivided according to Hindu law where one or more of the proprietors of a property remain disqualified although another or others have ceased to be disqualified, the Court of Wards may, with the sanction of the Provincial Government, retain the whole of the property under its superintendence, paying any proprietor who has ceased to be disqualified from surplus income such portion as shall be proportionate to his interest

in the estate. It is apparent that these provisions are based upon the usual practice of Hindu Law that the property of a joint Hindu family should generally be managed by a co-sharer otherwise fit to manage and who is known as the manager; and that in special cases departure may be made from the rule of such manager being in charge of the property. These considerations do not apply to a family which is no longer undivided. In the present case the family has ceased to be a joint Hindu family by reason of partition. After partition the share of each member ~~separately after partition~~ ~~has been ascertained~~ has been ascertained. Consequently, the Court of Wards would be deemed to be in management of the share of each member separately after partition, and each such member would have to be treated as a Government ward. There would, therefore, be no legal objection to releasing the share of Mr. M. S. Nattu from the superintendence of the Court of Wards and to retaining the management in respect of the shares of other members.

IS/-P.M.L.
16/11

Remembrancer of Legal Affairs.

U.R. to R.D., No. 10773

dated the 16th November 1948.

BKS. 11/6/ 48.